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ART UNIT	PAPER NUMBER
2141	10

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

| **Office Action Summary** | Application No. 09/454,870 | Applicant(s) Patel et al. |
| | Examiner Kenneth R. Coulter | Art Unit 2141 |

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ___3___ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Jun 5, 2003* .

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-6, 8-13, 15-22, and 24-63* is/are pending in the application.

    4a) Of the above, claim(s) *52-54 and 58-60* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-6, 8, 9, 15-22, 24-35, 40-46, 51, 55-57, and 61-63* is/are rejected.

7) ☒ Claim(s) *10-13, 36-39, and 47-50* is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some* c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    *See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

    a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

4) ☐ Interview Summary (PTO-413) Paper No(s). _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2.   Claim 44 recites the limitation "the network events" in line 1. There is insufficient

antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4.   Claims 1 - 6, 8, 9, 15 - 22, 24 - 35, 40 - 46, 51, 55 - 57, and 61 - 63 are rejected under 35

U.S.C. 102(b) as being disclosed by Blasbalg (U.S. Pat. No. 4,771,391) (Adaptive Packet

Length Traffic Control in a Local Area Network).

4.1   Regarding claim 40, <u>Blasbalg</u> discloses a method of aggregating data packets, the method

comprising:

        determining, based upon the *load* of a server computer, whether to aggregate one or more

of the data packets into an aggregated data packet (Abstract; col. 5, lines 5 - 15); and

        transmitting the aggregated data packet to a client computer (Abstract; Fig. 1; col. 5, lines

5 - 15).

4.2   Per claim 41, <u>Blasbalg</u> teaches that the data packets are not aggregated in an aggregated

data packet larger than the size of a maximum transmission unit for any intermediary network

device that is in the transmission path between the server computer and the client computer (col.

5, lines 5 - 15).

4.3   Regarding claim 42, <u>Blasbalg</u> discloses determining the server load comprises comparing

the number of data packets that are overdue to the total number of data packets (col. 6, lines 15 -

21).

4.4   Per claim 43, <u>Blasbalg</u> teaches determining the server load comprises comparing the

number of network events processed by a server program that is executing on the server

computer due to exceeding a time out threshold to the total number of network events that the

server program processes (col. 6, lines 15 - 21).

4.5   Regarding claim 44, <u>Blasbalg</u> does not explicitly disclose that *network events* are selected

from the group comprising: a play command, a pause command, a seek command, a ping

command, and a re-send command.

However, the ping command is inherent in <u>Blasbalg</u> because the analysis and tracking of the

network in <u>Blasbalg</u>.

4.6   Per claim 45, <u>Blasbalg</u> teaches that the server load is based at least in part upon the actual

transmission rate between the server computer and the client computer (col. 5, lines 5 - 15).

4.7   Regarding claim 46, <u>Blasbalg</u> discloses that the data packets are aggregated in an

aggregated data packet until the size of the aggregated data packet exceeds a minimum threshold

without exceeding a maximum threshold (Abstract; col. 5, lines 5 - 15).

4.8   Per claim 51, <u>Blasbalg</u> teaches that the size of the minimum threshold relates to a quality

of presentation of the streamable data objects and the maximum threshold relates to a *maximum*

transmission unit (Abstract; col. 5, lines 5 - 15).

4.9   Regarding claims 1 - 6, 8, 9, 15 - 22, 24 - 35, 55 - 57, and 61 - 63, the rejection of claims

40 - 46 and 51 (paragraphs 4.1 - 4.8 above) under 35 USC 102(b) applies fully.

In addition, with regard to claims 15, 16 and 24, 25, Blasbalg discloses that the process of

transmitting the streamable data objects from server to client comprises increasing the packet size

of one or more data packets (Abstract; col. 5, lines 5 - 15), and either increasing or decreasing the

frequency of transmission of one or more data packets (col. 4, lines 29 - 37); but does not

explicitly disclose increasing the number of channels that are used to transmit the streamable data

objects,

The Examiner hereby takes official notice that this feature is commonplace in the streamable

multimedia art in order to increase the speed of transmission, and therefore does not represent

patentably distinct features over the prior art.

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act

of 1999 (AIPA) do not apply to the examination of this application as the application being

examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35

U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the

amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6.   Claims 1 - 6, 8, 9, 15 - 22, 24 - 35, 40 - 46, 51, 55 - 57, and 61 - 63 are rejected under 35

U.S.C. 102(e) as being disclosed by Miller et al. (U.S. Pat. No. 6,014,707) (Stateless Data

Transfer Protocol With Client Controlled Transfer Unit Size).

6.1   Regarding claim 40, Miller discloses a method of aggregating data packets, the method

comprising:

        determining, based upon the *load* of a server computer, whether to aggregate one or more

of the data packets into an aggregated data packet (Abstract; col. 2, lines 1 - 8; col. 5, lines 38 -

49); and

        transmitting the aggregated data packet to a client computer (Abstract; Fig. 1).

6.2   Per claim 41, Miller teaches that the data packets are not aggregated in an aggregated data

packet larger than the size of a maximum transmission unit for any intermediary network device

that is in the transmission path between the server computer and the client computer (col. 5, lines

38 - 49).

6.3   Regarding claim 42, <u>Miller</u> discloses determining the server load comprises comparing the

number of data packets that are overdue to the total number of data packets (col. 8, lines 10 - 21).

6.4   Per claim 43, <u>Miller</u> teaches determining the server load comprises comparing the number

of network events processed by a server program that is executing on the server computer due to

exceeding a time out threshold to the total number of network events that the server program

processes (col. 8, lines 10 - 21).

6.5   Regarding claim 44, <u>Miller</u> does not explicitly disclose that *network events* are selected

from the group comprising: a play command, a pause command, a seek command, a ping

command, and a re-send command (Figs. 7, 8).

6.6   Per claim 45, <u>Miller</u> teaches that the server load is based at least in part upon the actual

transmission rate between the server computer and the client computer (col. 5, lines 38 - 49).

6.7   Regarding claim 46, <u>Miller</u> discloses that the data packets are aggregated in an aggregated

data packet until the size of the aggregated data packet exceeds a minimum threshold without

exceeding a maximum threshold (col. 5, lines 38 - 49).

6.8   Per claim 51, <u>Miller</u> teaches that the size of the minimum threshold relates to a quality of

presentation of the streamable data objects and the maximum threshold relates to a *maximum*

transmission unit (col. 5, lines 38 - 49).

6.9   Regarding claims 1 - 6, 8, 9, 15 - 22, 24 - 35, 55 - 57, and 61 - 63, the rejection of claims

40 - 46 and 51 (paragraphs 6.1 - 6.8 above) under 35 USC 102(e) applies fully.

In addition, with regard to claims 15, 16 and 24, 25, <u>Miller</u> discloses that the process of

transmitting the streamable data objects from server to client comprises increasing the packet size

of one or more data packets (col. 5, lines 38 - 49), and either increasing or decreasing the

frequency of transmission of one or more data packets (col. 2, lines 9 - 15); but does not explicitly

disclose increasing the number of channels that are used to transmit the streamable data objects,

The Examiner hereby takes official notice that this feature is commonplace in the streamable

multimedia art in order to increase the speed of transmission, and therefore does not represent

patentably distinct features over the prior art.

7.   Claims 1 - 6, 8, 9, 15 - 22, 24 - 35, 40 - 46, 51, 55 - 57, and 61 - 63 are rejected under 35

U.S.C. 102(b) as being disclosed by <u>Shaffer et al.</u> (U.S. Pat. No. 6,003,089) (Method for

Constructing Adaptive Packet Lengths in a Congested Network).

7.1   Regarding claim 40, <u>Shaffer</u> discloses a method of aggregating data packets, the method

comprising:

   determining, based upon the *load* of a server computer, whether to aggregate one or more

of the data packets into an aggregated data packet (Abstract; Fig. 4; col. 5, lines 1 - 7); and

   transmitting the aggregated data packet to a client computer (Abstract).

7.2   Per claim 41, <u>Shaffer</u> teaches that the data packets are not aggregated in an aggregated

data packet larger than the size of a maximum transmission unit for any intermediary network

device that is in the transmission path between the server computer and the client computer (col.

7, lines 10 - 13; col. 8, lines 6 - 13).

7.3   Regarding claim 42, <u>Shaffer</u> discloses determining the server load comprises comparing

the number of data packets that are overdue to the total number of data packets (col. 5, lines 61 -

65).

7.4   Per claim 43, <u>Shaffer</u> teaches determining the server load comprises comparing the

number of network events processed by a server program that is executing on the server

computer due to exceeding a time out threshold to the total number of network events that the

server program processes (col. 5, lines 61 - 65).

7.5   Regarding claim 44, <u>Shaffer</u> does not explicitly disclose that *network events* are selected

from the group comprising: a play command, a pause command, a seek command, a ping

command, and a re-send command.

However, the ping command is inherent in <u>Shaffer</u> because of the determination of available media

(Fig. 2, item 80).

7.6   Per claim 45, <u>Shaffer</u> teaches that the server load is based at least in part upon the actual

transmission rate between the server computer and the client computer (col. 4, lines 40 - 58).

7.7   Regarding claim 46, <u>Shaffer</u> discloses that the data packets are aggregated in an

aggregated data packet until the size of the aggregated data packet exceeds a minimum threshold

without exceeding a maximum threshold (col. 5, lines 1 - 7).

7.8   Per claim 51, <u>Shaffer</u> teaches that the size of the minimum threshold relates to a quality of

presentation of the streamable data objects and the maximum threshold relates to a *maximum*

transmission unit (col. 5, lines 1 - 7).

7.9   Regarding claims 1 - 6, 8, 9, 15 - 22, 24 - 35, 55 - 57, and 61 - 63, the rejection of claims

40 - 46 and 51 (paragraphs 7.1 - 7.8 above) under 35 USC 102(e) applies fully.

In addition, with regard to claims 15, 16 and 24, 25, <u>Shaffer</u> discloses that the process of

transmitting the streamable data objects from server to client comprises increasing the packet size

of one or more data packets (col. 5, lines 1 - 7), and either increasing or decreasing the frequency

of transmission of one or more data packets (col. 5, lines 1 - 7); but does not explicitly disclose

increasing the number of channels that are used to transmit the streamable data objects,

The Examiner hereby takes official notice that this feature is commonplace in the streamable

multimedia art in order to increase the speed of transmission, and therefore does not represent

patentably distinct features over the prior art.

Allowable Subject Matter

8.   Claims 10 - 13, 36 - 39, and 47 - 50 are objected to as being dependent upon a rejected

base claim, but would be allowable if rewritten in independent form including all of the limitations

of the base claim and any intervening claims.

Response to Arguments

9.   Applicant's arguments with respect to claims 1 - 6, 8, 9, 15 - 22, 24 - 35, 40 - 46, 51, 55 -

57, and 61 - 63 have been considered but are moot in view of the new ground(s) of rejection.

10.   Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Kenneth Coulter whose telephone number is (703) 305-8447.

KENNETH R. COULTER
PRIMARY EXAMINER

krc

August 25, 2003